

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DOROTHY L. VAUGHN

Claimant

VS.

RUBBERMAID SPECIALTY PRODUCTS

Respondent

Self-Insured

)
)
)
)
)
)
)

Docket No. 213,713

ORDER

Claimant appeals from an Award rendered by Administrative Law Judge Nelsonna Potts Barnes on March 9, 1998. The Appeals Board heard oral argument November 13, 1998.

APPEARANCES

Steven R. Wilson of Wichita, Kansas, appeared on behalf of claimant. David S. Wooding of Wichita, Kansas, appeared on behalf of respondent, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ found permanent disability to the left lower extremity only. The only issue on appeal is the nature and extent of claimant's disability. Claimant contends she suffered injury to both lower extremities and to her back. She also contends she is entitled to an award for work disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed. Claimant is awarded benefits based on a 14 percent permanent impairment to the left lower extremity.

Findings of Fact

1. Claimant was injured on March 17, 1996, when a hot plastic mold hit her left knee.
2. After going to the Arkansas City clinic five or six times, claimant was referred to Dr. Kenneth A. Jansson. Dr. Jansson performed surgery, a chondroplasty on the left knee, on May 16, 1996. During the follow-up treatment, claimant complained of pain in her right knee. Notes of the July 17, 1996, exam record a complaint of right knee pain and swelling for approximately three weeks. Claimant also complained of pain in her back at that same visit. Dr. Jansson advised therapy for the right knee along with the therapy for the left. As to the back, however, he made a separate referral for therapy, indicating he did not think it was work related and would not be under workers compensation. In October 1996, claimant asked Dr. Jansson whether the right knee problem was work related. He told her favoring the left knee and limping probably was causing some pain in the right knee but he would not recommend further treatment to the right knee and would not say it was due to her original injury. Dr. Jansson concluded claimant had reached maximum medical improvement and gave her permanent restrictions. He limited her to no lifting over 50 pounds, no carrying over 50 pounds, no kneeling with the left knee, and no squatting. He rated the impairment as 8 percent of the left lower extremity.
3. Dr. Pedro A. Murati examined claimant on October 28, 1996, at the request of claimant's counsel. Dr. Murati diagnosed: (1) status post left patellar chondroplasty; (2) right knee strain secondary to the left knee condition; and, (3) lumbosacral strain secondary to the left knee condition. He recommended she avoid bending the left knee past 10 degrees and limit lifting to 20 pounds occasionally, 10 pounds frequently, and 5 pounds constantly. Because of the back problems, he recommended claimant avoid lifting objects from below waist height. He rated the impairment as 23 percent of the left lower extremity, 3 percent to the right lower extremity, and 5 percent of the body for the back strain. He combined these ratings to a whole body rating of 15 percent.

Dr. Murati also reviewed a report prepared by Mr. Jerry D. Hardin, a vocational expert. The report applied Dr. Murati's restrictions to a list of the tasks claimant had performed in work during the 15 years before the current injury. Dr. Murati agreed with Mr. Hardin's opinions regarding which of those tasks claimant can not now perform.

On cross-examination, Dr. Murati acknowledged the examination of claimant's right knee was normal. He concluded he must have forgotten to record something which explained his 3 percent rating. As a result, he offered to, and did, see claimant for a second examination on November 20, 1997. A second deposition was taken after the second examination, and Dr. Murati again stated that his rating for the right knee was 3 percent. At the second examination, he noted crepitus in the right knee.
4. At the request of the ALJ, Dr. Philip R. Mills examined claimant on two occasions, once on February 27, 1997, and again on July 1, 1997. The second examination was required because, according to Dr. Mills, he was told at the time of the first examination he was to examine only the left knee.
5. At the time of the first examination in February 1997, claimant completed a pain chart, a diagram of the body on which she was asked to mark the locations of the pain she was

experiencing. Claimant marked her low back and left knee but not the right knee. Dr. Mills testified that even if told not to examine the right knee, he believes he would have recorded complaints to the right knee if she had made such complaints. Dr. Mills examined both the low back and the left knee.

6. Dr. Mills found a full range of motion of the low back without muscle spasms. Except for complaints of tenderness to palpation, the examination was normal.

7. Dr. Mills' examination of the left knee revealed tenderness, particularly in the outside area, but no crepitation, swelling, effusion, heat, or instability. There was pain inhibition with manual muscle testing on the left when compared to the right. Dr. Mills diagnosed chondromalacia of the patella, status post debridement. He concluded she has a 10 percent permanent partial impairment of the left lower extremity. He found no impairment to the back.

8. After it was learned Dr. Mills had limited his first examination to the left knee and back, claimant was sent again to Dr. Mills in July 1997. Dr. Mills reexamined the back and again all findings were normal except for pain to palpation. Dr. Mills testified he would again, based on this second exam, give no impairment rating for the back. He described the back condition as closer to a category I than a II, and acknowledged one could argue for between 0 and 5 percent impairment, but stated he would need some evidence of trauma before he would call it a category II.

Dr. Mills also examined the right knee at the July examination. He noted a popping sound when she squatted, a sound which may or may not be indicative of any problem, some roughness when he moved the patella with compression, and pain to palpation on the distal femur. He found no joint pain and good range of motion. He found evidence of chondromalacia, but he concluded there was no impairment of function to the right knee. On cross-examination, he acknowledged that it was possible the accident caused an aggravation of chondromalacia in the right knee.

Conclusions of Law

1. Claimant has the burden of proving his/her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).

2. K.S.A. 44-510d provides a list of the maximum number of weeks of benefits for certain injuries referred to as scheduled injuries.

3. Simultaneous injury to two or more scheduled members can result in a general body disability, but the injury must cause permanent injury to both scheduled members. *Murphy v. IBP, Inc.*, 240 Kan. 141, 727 P.2d 468 (1986).

4. The facts in this case present a difficult choice between the injury to one scheduled member (the left lower extremity) and the body as a whole with dramatically different consequences in the amount of compensation to be paid. Nevertheless, based on the

record as a whole, the Board finds the evidence does not establish, by a preponderance of the credible evidence, that claimant has more than a scheduled injury.

5. The Board agrees with and affirms the finding that claimant suffered a 14 percent permanent partial disability to the left lower extremity.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes on March 9, 1998, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
David S. Wooding, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director